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Date of Decision: 10th October 1995

SPECIAL CIVIL APPLICATION NO. 3265 of 1989

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not?
No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.U. Shah, Advocate, for the Petitioner

Shri M.R. Anand, Government Pleader, with Shri D.N. Patel,
Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 10th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 2nd January 1986 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 31st January 1989 in Appeal No. Rajkot-88 of 1986 is under challenge in this petition under Art. 226 of the Constitution of India.

By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 540.52 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding for and on behalf of his joint family within the urban agglomeration of Rajkot. Its copy is at Annexure A to this petition. That form was earlier processed by respondent No. 1 by his order passed on 19th February 1979 and he came to the conclusion that the holding of the petitioner was not in excess of the ceiling limit. Its copy is at Annexure B to this petition. It appears that the order at Annexure B to this petition came to the notice of the concerned officer of the State Government (respondent No.3 herein). He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice thereupon came to be issued on 16th September 1983 calling upon the petitioner to show cause why the order at Annexure B to this petition should not be revised. A copy of the aforesaid show-cause notice is at Annexure C to this petition. The petitioner filed his reply thereto. Its copy is at Annexure D to this petition. Thereafter, by the order passed by and on behalf of respondent No.3 on 20th October 1984, the order at Annexure B to this petition came to be set aside and the matter was remanded to respondent No.1 for restoration of the proceedings to file and for its fresh disposal according to law. A copy of the aforesaid order passed on 20th October 1984 is at Annexure E to this petition. Pursuant thereto, the petitioner filed his objections to the draft statement. A copy of his written objections is at Annexure F to this petition. After hearing the petitioner, by his order passed on 2nd January 1986 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 540.52 square meters. Its copy is at Annexure J to this petition. Pursuant thereto, the final statement was prepared and served to the petitioner as provided in sec. 9 thereof. Its copy is at Annexure K to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure L to this petition. It came to be registered as Appeal No. Rajkot-88 of 1986. By the order passed by respondent No.2 on 31st January 1989 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure M to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure J to this petition as affirmed in appeal by the appellate order at Annexure M to this petition.

3. It is the case of the petitioner that he received one property in Manhar Plot at Rajkot admeasuring 1263.76 square meters by way of partition amongst his brothers some time on 29th November 1950. It was an ancestral property in the hands of the petitioner and his brothers and the petitioner received that property as his one-third share in partition. Since it was an ancestral property in the hands of the petitioner, his son would acquire interest therein from his birth in view of settled principles of law well enshrined in the Hindu Law. In that view of the matter, there is no escape from the conclusion that the petitioner was holding that parcel of land jointly with his son, named, Nayankumar. The petitioner was therefore justified in filing his declaration in the prescribed form under sec. 6(1) of the Act on behalf of his joint family consisting of himself and his son. The name of his daughter as a co-parcener was unduly shown therein.

4. Since the property in Manhar Plot was admeasuring 4.

Since the property of Manhar Plot was admeasuring 1263.76 square meters and since the petitioner was holding jointly with his son Nayankumar, the petitioner's share therein could be said to be about 632 square meters. It may be mentioned at this stage that the birth-date of the petitioner's son Nayankumar is shown to be 15th April 1949 as transpiring from the SSC certificate at Annexure H to this petition. He was therefore major on the date of coming into force of the Act. His share therefore could not be clubbed with the petitioner. That is how I have taken the petitioner's share in the property in Manhar Plot to be 632 square meters. That area together with the other properties of the petitioner would come to in all about 1300 square meters. The ceiling limit prescribed for the urban agglomeration of Rajkot is 1500 square meters. In that view of the matter, there is no hesitation in coming to the conclusion that the holding of the petitioner was very much within the ceiling limit for the purposes of the Act.

5. It may be noted that in his order at Annexure J to this petition respondent No.1 has held that members of the joint family would be an association of persons in view of some circular issued by the State Government on 1st September 1964. That conclusion and the circular also would be contrary to the Division Bench ruling of this court in the case of Chhaganlal Trikamdas Thakker and Others v. Competent Authority, Rajkot and others reported in 1994(1) Gujarat Current Decisions at page 1. In that view of the matter, that conclusion will have to be quashed and set aside.

6. Even otherwise the petitioner can be said to be holding his property within the ceiling limit. The reason therefor is quite simple. It has been found in the declaration at Annexure A to this petition that the property in Manhar Plot was a

constructed property. It appears that it had two buildings, one a residential house and the other a cluster of six shops as transpiring from the sale deed executed by the petitioner on 8th January 1980. Its copy is at Annexure I to this petition. For each constructed building the petitioner would be entitled to the land appurtenant thereto to the tune of 500 square meters each in the minimum. Together with the constructed area and the land appurtenant thereto, the total area of the property admeasuring 1263.76 square meters will have to be excluded in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and Others reported in AIR 1992 SC 1567. If that area is excluded, what will remain in the holding of the petitioner would be something like 656.53 square meters. That area can certainly be said to be very much within the ceiling limit for the purposes of the Act.

7. In view of my aforesaid discussion and in either view of the matter, the holding of the petitioner cannot be said to be in excess of the ceiling limit for the purposes of the Act. In that view of the matter, the impugned order at Annexure J to this petition as affirmed in appeal by the appellate order at Annexure M to this petition cannot survive. It has to be quashed and set aside.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 2nd January 1986 at Annexure J to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 31st January 1989 in Appeal No. Rajkot-88 of 1986 at Annexure M to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.